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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2011-0031]

Notice of Decision to Authorize the Importation of Fresh Pitayas and Pomegranates from Mexico into the Continental United States

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public of our decision to authorize the importation into the continental United States of fresh pitayas and pomegranates from Mexico. Based on the findings of pest risk analyses, which we made available to the public for review and comment through a previous notice, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh pitayas and pomegranates from Mexico.

**DATES:** As of: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Marc Phillips, Senior Regulatory Policy Specialist, Regulations, Permits, and Import Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 851-2114.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

Under the regulations in "Subpart--Fruits and Vegetables" (7 CFR 319.56-1 through 319.56-58, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56-4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis (PRA), can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS publishes a notice in the Federal Register announcing the availability of the PRA that evaluates the risks associated with the importation of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS may authorize the importation of the fruit or vegetable subject to the identified designated measures if: (1) No comments were received on the PRA; (2) the comments on the PRA revealed that no changes to the PRA were necessary; or (3) changes to the PRA were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

In accordance with that process, we published a notice<sup>1</sup> in the Federal Register on August 2, 2011 (76 FR 46268-46269, Docket No. APHIS-2011-0031), in which we announced the availability, for review and comment, of PRAs that evaluate the risks associated with the importation into the continental United States of fresh pitayas and pomegranates from Mexico.

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<sup>1</sup> To view the notice, the PRA, and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0031>.

We solicited comments on the notice for 60 days ending on October 3, 2011. We received three comments by that date. They were from a State agricultural agency, a foreign trade association, and a foreign governmental organization. The comments are discussed below by topic.

One commenter who opposed the action stated that pitayas and pomegranates from Mexico are hosts for several species of economically important fruit flies, specifically Anastrepha species and Mediterranean fruit fly, as well as other surface-feeding arthropods that could be an economic threat to agriculture in the commenter's State. In particular, the commenter stated that irradiation at the proposed absorbed dose of 150 Gy does not fully remove the possible risk of introduction of exotic fruit flies.

Prior to approving the proposed 150 Gy dose, APHIS reviewed scientific evidence on the effectiveness of this dose. The importation of other commodities treated with this dose without the introduction or dissemination of plant pests demonstrates the effectiveness of the proposed 150 Gy dose as a mitigation.

The commenter also stated that the required proposed irradiation does not mitigate the risk of the surface-feeding species of arthropods. The commenter asked that shipments not be permitted entry into his State until the shipping protocol has had sufficient time to demonstrate the effectiveness of the cited mitigation measures.

As noted in the risk management documents (RMDs) for both pitayas and pomegranates, the proposed mitigation for surface feeders on these commodities is not irradiation, but inspection of the commodity by the national plant protection organization (NPPO) of Mexico, with certification that the commodity is free from quarantine pests of concern. Pomegranates and pitayas have been authorized for importation from fruit fly-free areas of Mexico since 1985,

and inspectors at U.S. ports of entry have not intercepted these surface-feeding pests on pomegranates or pitayas during their inspections of the fruit. We expect that standard quality control of commercial shipments including culling will remove most of these pests from the commodity.

Some comments were specific to pitayas. Two commenters stated that Anastrepha fraterculus, Dysmicoccus neobrevipes, and Planococcus minor should be removed from the pest list for pitayas because of insufficient evidence that they are pests of pitayas.

Subsequent to publication of the proposed rule, we established that P. minor no longer meets our definition of a quarantine pest and have added it to our list<sup>2</sup> of pests that we no longer regulate. The RMD for pitayas was revised to reflect this.

APHIS has sufficient evidence that A. fraterculus has the ability to attack pitayas. Similarly, two separate resources note that D. neobrevipes, is present in Mexico and there is evidence that this pest attacks pitayas. Therefore, Anastrepha fraterculus and Dysmicoccus neobrevipes will remain on the pest list for pitayas from Mexico.

Two commenters noted that Euschistus servus is a pest of economic significance in several crops in the United States. The commenters stated that the lack of evidence that this pest is under official control in the United States suggests that E. servus does not qualify as a quarantine pest and should be removed from the pitayas pest list.

We agree. E. servus is prevalent in at least 14 States in the United States and is not regarded as a quarantine pest. We have removed E. servus from the list in the PRA of quarantine pests likely to follow the pathway of pitayas from Mexico. The RMD for pitayas has also been revised to reflect this change.

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<sup>2</sup> This list can be viewed at [http://www.aphis.usda.gov/plant\\_health/plant\\_pest\\_info/frsmp/non-reg-pests.shtml](http://www.aphis.usda.gov/plant_health/plant_pest_info/frsmp/non-reg-pests.shtml).

The commenters also stated that inspection by APHIS at the port of entry should be sufficient mitigation for Maracayia chlorisalis because the pest is present in Mexico and APHIS documentation indicates U.S. inspectors have not intercepted this pest over 26 years of imports from various countries.

APHIS agrees that inspection at the port of entry will be sufficient mitigation for M. chlorisalis. As noted in our previous notice, shipments of either pitayas or pomegranates from Mexico are subject to inspection at the U.S. ports of entry. The proposed irradiation treatment is a mitigation for the fruit flies associated with pitayas, not M. chlorisalis.

The commenters also said that the likelihood of Milax species following the pathway of pitayas is low due to the management of the orchards, the post-harvest management of the fruit, and the sensitivity of Milax species to the environment.

APHIS agrees that inspection at port of entry is sufficient to mitigate the risk of Milax species.

The commenters also noted that, according to International Plant Protection Convention (IPPC) standards, quarantine pests should be identified at the species level.

The commenters are correct. IPPC guidelines state that quarantine pests should be identified at the species level on additional declarations. We have revised the RMDs for both pitayas and pomegranates from Mexico to state that the additional declaration should include a general statement indicating that the consignment was inspected and found free from quarantine pests.

The remaining comments concerned pomegranates. Two commenters said that the following pests should not be considered actionable pests because they are not established in Mexico and are regarded as pests of quarantine significance by Mexico's NPPO: Aleurodicus

disperses, Ceroplastes rubens, Coccus viridis, Maconellicoccus hirsutus, and Dysmicoccus neobrevipes.

Subsequent to publication of the proposed rule, we established that C. viridis no longer meets our definition of a quarantine pest and have added it to our list<sup>3</sup> of pests that we no longer regulate. The RMD for pomegranates was revised to reflect this.

The pests A. disperses, C. rubens, M. hirsutus, and D. neobrevipes are on the regulated pest list for Mexico on the International Plant Protection Convention's Web site. Several resources report the presence of these pests in Mexico, although the specific locations within the country are not indicated. Without survey data, it is impossible to specify the exact areas of distribution for these pests, although APHIS does assume that these pests have a limited distribution in Mexico. Finally, we note these pests occur in a limited portion of the continental United States and are considered quarantine-significant, actionable organisms. We believe it is appropriate that A. disperses, C. rubens, M. hirsutus, and D. neobrevipes remain on the pest list for pomegranates from Mexico.

The commenters also said that Siphoninus phillyreae and M. hirsutus do not qualify as quarantine pests because they are present in United States and there is no evidence they are under official control.

S. phillyreae and M. hirsutus have limited distribution in the United States and are currently considered by our Agency to be quarantine-significant, actionable pests. We continue to consider them likely to follow the pathway and, therefore, will retain them on the pest list for pomegranates.

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<sup>3</sup> This list can be viewed at [http://www.aphis.usda.gov/plant\\_health/plant\\_pest\\_info/frsmp/non-reg-pests.shtml](http://www.aphis.usda.gov/plant_health/plant_pest_info/frsmp/non-reg-pests.shtml).

Therefore, in accordance with the regulations in § 319.56-4(c)(2)(ii), we are announcing our decision to authorize the importation into the continental United States of fresh pitayas and pomegranates from Mexico subject to the following phytosanitary measures:

- Fresh pitayas and pomegranates may be imported into the continental United States in commercial consignments only.
- The pitayas and pomegranates must be irradiated in accordance with 7 CFR part 305 with a minimum absorbed dose of 150 Gy.
- If the irradiation treatment is applied outside the United States, each consignment of fruit must be jointly inspected by APHIS and the NPPO of Mexico and accompanied by a phytosanitary certificate (PC) attesting that the fruit received the required irradiation treatment.
- If the irradiation treatment is applied upon arrival in the United States, each consignment of fruit must be inspected by the NPPO of Mexico prior to departure. For consignments of pitayas, the inspection must include a sampling procedure mutually agreed upon by APHIS and the NPPO of Mexico.
- The PC for consignments of pitayas or pomegranates must also include an additional declaration stating that the consignment was inspected and found free from quarantine pests.
- The commodity is subject to inspection at the U.S. ports of entry.

These conditions will be listed in the Fruits and Vegetables Import Requirements database (available at <http://www.aphis.usda.gov/favir>). In addition to these specific measures, pitayas and pomegranates from Mexico will be subject to the general requirements listed in § 319.56-3 that are applicable to the importation of all fruits and vegetables.

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 7th day of August 2013 .

Kevin Shea

Administrator, Animal and Plant Health Inspection Service.

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